



UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

January 2023 Grand Jury

UNITED STATES OF AMERICA,

CR 2:23-cr-00089-DSF

Plaintiff,

I N D I C T M E N T

v.

[18 U.S.C. § 1348(1): Securities Fraud; 15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5: Securities Fraud (Insider Trading); 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c): Criminal Forfeiture]

TERREN SCOTT PEIZER,

Defendant.

The Grand Jury charges:

COUNT ONE

[18 U.S.C. §§ 1348(1), 2(b)]

A. INTRODUCTORY ALLEGATIONS

At times relevant to this Indictment:

1. Ontrak, Inc. was a company based in Santa Monica, California, that provided behavioral health services, primarily to members of large health-insurance plans, designed to reduce the insurance companies' costs. Shares of Ontrak were publicly traded on the National Association of Securities Dealers Automated Quotations Stock Market ("NASDAQ"), a national securities exchange, under the

1 symbol "OTRK." Ontrak was an issuer with securities registered under  
2 Section 12 of the Securities Exchange Act of 1934 (the "Exchange  
3 Act") and was required to file reports under Section 13 of the  
4 Exchange Act.

5 2. Defendant TERREN SCOTT PEIZER was a resident of Puerto Rico  
6 and Santa Monica, California. Defendant PEIZER was the Executive  
7 Chairman (a management role to which the Chief Executive Officer  
8 ("CEO") reported) and Chairman of the Board of Directors for Ontrak.  
9 Defendant PEIZER founded Ontrak in or around September 2003 and had  
10 served as its CEO until in or around April 2021. By virtue of his  
11 relationship with Ontrak, defendant PEIZER had access to material  
12 nonpublic information belonging to Ontrak, including Ontrak's  
13 relationship with and retention of customers. As a member of the  
14 Board of Directors, defendant PEIZER was a corporate insider and owed  
15 a fiduciary duty and duty of trust and confidence to Ontrak and its  
16 shareholders.

17 3. A stock "warrant" gave the holder the right to purchase a  
18 public company's stock at a specific price. A stock warrant was  
19 issued directly by the company. When the holder exercised a stock  
20 warrant, the shares that fulfilled the obligation came directly from  
21 the company. Once the stock warrant was exercised, the new shares  
22 operated identically to any other shares and could be held or sold by  
23 the holder.

24 4. A "Rule 10b5-1 plan" under the Exchange Act allowed a  
25 corporate insider of a publicly traded company to set up a trading  
26 plan for selling stock that he or she owned. If the corporate  
27 insider followed the requirements of Rule 10b5-1, the trades pursuant  
28 to the plan were insulated against charges of insider trading. Rule

1 10b5-1 required that the corporate insider establishing the plan  
2 could not possess material nonpublic information about the company at  
3 the time he or she entered into the plan; if the insider did have  
4 material nonpublic information at the time he or she entered into the  
5 plan, the plan provided no defense to insider trading charges.  
6 Additionally, trading pursuant to a Rule 10b5-1 plan provided no  
7 defense to insider trading charges if the plan was not entered into  
8 in good faith or was entered into as part of an effort or scheme to  
9 evade the prohibitions of Rule 10b5-1.

10 5. A "cooling-off period" was a specified time period,  
11 commonly used in the securities industry, during which an executive  
12 waited a certain number of days after establishing a Rule 105b-1 plan  
13 to begin trading. Cooling-off periods were used to ensure that  
14 enough time passed between when the executive established a plan and  
15 when the plan began to execute trades to minimize the likelihood that  
16 the executive was trading on the basis of material nonpublic  
17 information.

18 6. Ontrak had an Insider Trading Policy, which governed  
19 defendant PEIZER's trading in Ontrak's stock. The Insider Trading  
20 Policy prohibited trading while in possession of material nonpublic  
21 information. The policy defined material nonpublic information as  
22 "information that has not been previously disclosed to the general  
23 public and is otherwise not available to the general public," which  
24 included negative information concerning Ontrak. The policy stated  
25 that information was material "if there is a reasonable likelihood  
26 that it would be considered important to an investor in making an  
27 investment decision regarding the purchase or sale of [Ontrak]'s  
28 securities." The policy identified certain "categories of

1 information that [were] particularly sensitive and, as a general  
2 rule, should always be considered material," including a "material  
3 agreement (or termination thereof)." Ontrak's agreements with  
4 certain customers constituted material agreements. The policy  
5 required Exchange Act Section 16 officers and directors, such as  
6 defendant PEIZER, to submit Pre-Trading Clearance Certifications to  
7 Ontrak's Chief Financial Officer ("CFO") before allowing the officer  
8 or director to trade pursuant to a 10b5-1 plan. The Pre-Trading  
9 Clearance Certification required the officer or director to certify  
10 "that this proposed dealing was not a result of access to, or receipt  
11 of Material Nonpublic Information as described in the Company's  
12 Insider Trading Policy."

13 7. Cigna was a healthcare and insurance company based in  
14 Bloomfield, Connecticut. Cigna provided health insurance and related  
15 products and services for millions of Americans. Beginning by at  
16 least in or about July 2020, Ontrak provided services to Cigna's  
17 insured patients under a \$90 million contract. The contract was  
18 intended to last for three years, although it allowed Cigna to  
19 terminate the contract upon 30 days' notice.

20 B. DEFENDANT PEIZER'S ACCESS TO NONPUBLIC INFORMATION REGARDING  
21 CIGNA

22 8. In or around March 2021, defendant PEIZER stepped down as  
23 CEO of Ontrak and became the Executive Chairman and Chairman of the  
24 Board of Directors. Despite the change in title, defendant PEIZER  
25 continued to receive nonpublic information about Ontrak, including  
26 its relationship with customers on a regular basis.

27 9. For example, between in or around March 2021 and in or  
28 around May 2021, defendant PEIZER learned, by virtue of his role as

1 Ontrak's Executive Chairman and Chairman of the Board of Directors,  
2 that its then-largest customer, Cigna, had raised numerous issues  
3 concerning its relationship with Ontrak and that Ontrak was in  
4 serious danger of Cigna terminating its agreement with Ontrak, which  
5 was nonpublic information that a reasonable investor would consider  
6 important in deciding whether or not to trade in Ontrak securities.

7 a. Specifically, defendant PEIZER knew the following:

8 i. In or around February 2021, Cigna began  
9 significantly reducing the number of its members that it referred per  
10 month to Ontrak for services; by at least in or around May 2021,  
11 Cigna had reduced the number of patients that it referred from  
12 several thousand members per month to approximately 50 members per  
13 month – thereby substantially reducing Ontrak's potential billings to  
14 Cigna;

15 ii. Cigna had informed Ontrak, in or around at least  
16 April 2021, that its contract with Ontrak would need to be  
17 renegotiated (with less favorable terms for Ontrak);

18 iii. Cigna had determined that its contract with  
19 Ontrak did not result in the cost savings it had anticipated;

20 iv. Cigna was concerned that Ontrak was spending  
21 funds under the current contract with Cigna too quickly; and

22 v. Cigna had halted discussions on any potential  
23 expansion of Ontrak's services to Cigna.

24 b. Defendant PEIZER also knew that the loss of Cigna as a  
25 customer would have a material adverse effect on Ontrak. Indeed, on  
26 or about February 28, 2021, Ontrak's then-largest customer, Aetna,  
27 had provided notice that it was terminating its contract with Ontrak.  
28 On or about March 1, 2021, following Ontrak's public announcement of

1 the loss, Ontrak's stock price dropped nearly 46% in value. As  
2 Ontrak's largest shareholder, defendant PEIZER lost approximately  
3 \$280 million in the value of his Ontrak securities following the  
4 announcement of Aetna's termination of its contract with Ontrak.

5 c. Defendant PEIZER also knew that, after the loss of  
6 Aetna as a customer, the serious jeopardy facing Ontrak's  
7 relationship with its next biggest customer, Cigna, would be of  
8 particular importance to investors.

9 d. On or about May 6, 2021, Ontrak filed a Form 10-Q  
10 quarterly report with the Securities and Exchange Commission ("SEC")  
11 stating, among other things, that "Our business currently depends  
12 upon four large customers; the loss of any one such customers would  
13 have a material adverse effect on us."

14 e. As Executive Chairman and Chairman of the Board of  
15 Directors, defendant PEIZER had direct access to and regular  
16 conversations with Ontrak's CEO, who provided him with regular  
17 updates about the status of Ontrak's negotiations with Cigna.

18 f. Defendant PEIZER's communications with Ontrak  
19 executives and consultants between in or around March 2021 and in or  
20 around May 2021 reflected his knowledge and understanding of the  
21 deteriorating relationship between Ontrak and Cigna. For example:

22 i. On or about March 31, 2021, defendant PEIZER  
23 described himself as "fixated" on Cigna in a text message to an  
24 Ontrak consultant;

25 ii. On or about April 2 and 14, 2021, defendant  
26 PEIZER wrote in text messages with the same consultant that Ontrak's  
27 management needed to "save Cigna";

4 iv. On or about April 24, 2021, in response to an  
5 update on the Ontrak-Cigna relationship, defendant PEIZER wrote that  
6 "This feels eerily like Aetna" and that "Baby is losing his hair from  
7 chemo," which was a reference to Ontrak's potential loss of Cigna as  
8 a customer;

9 v. On or about April 30, 2021, in response to  
10 another update concerning Cigna, defendant PEIZER wrote in a text  
11 message to the consultant, "Doesn't sound optimistic"; and

12 vi. On or about May 1, 2021, defendant PEIZER sent a  
13 text message to the consultant concerning the Ontrak-Cigna  
14 relationship saying, "What a nightmare."

15 g. By at least on or about May 4, 2021, defendant PEIZER  
16 was well aware that Cigna had expressed serious concerns about  
17 maintaining its contract with Ontrak and that a meeting with Cigna's  
18 Chief Medical Officer - who was managing the Ontrak-Cigna  
19 relationship on Cigna's side - had been scheduled for May 18, 2021,  
20 to discuss the status of the relationship.

24 || C. THE INSIDER TRADING SCHEME

25        10. Beginning on an unknown date but no later than in or around  
26 May 2021, and continuing through in or around August 2021, in Los  
27 Angeles County, within the Central District of California, and  
28 elsewhere, defendant PEIZER, together with others known and unknown

1 to the Grand Jury, knowingly and with intent to defraud, devised,  
2 participated in, and executed a scheme to defraud a person in  
3 connection with the securities of Ontrak.

4 11. The fraudulent scheme operated, in substance, as follows:

5 Defendant PEIZER Entered into a Rule 10b5-1 Plan in May 2021 and  
6 Sold his Ontrak Securities Based on Inside Information that  
7 Ontrak was at Serious Risk of Losing its Contract with Cigna

8 a. On or about May 4, 2021, in advance of Ontrak's May  
9 18, 2021, meeting with Cigna, defendant PEIZER contacted Broker A to  
10 set up a Rule 10b5-1 plan in order to sell shares of Ontrak valued at  
11 approximately \$19 million.

12 b. According to publicly available SEC filings, defendant  
13 PEIZER had previously only sold his Ontrak shares twice since 2003:  
14 once in 2008 for approximately \$220,000; and once in 2011 for  
15 approximately \$118,000.

16 c. After defendant PEIZER contacted Broker A to set up a  
17 10b5-1 plan, he was informed that Broker A required the 10b5-1 plan  
18 to have a cooling-off period. After learning that Broker A required  
19 a cooling-off period, defendant PEIZER declined to set up a 10b5-1  
20 plan with Broker A and instead, that same day, contacted another  
21 brokerage company, Broker B, to discuss setting up a 10b5-1 plan with  
22 Broker B.

23 d. Although Broker B did not require a cooling-off  
24 period, Broker B warned defendant PEIZER in an e-mail that not  
25 following the industry best practice of a 30-day cooling-off period,  
26 together with the "rapid transaction executions subsequent to plan  
27 adoption" might "create an appearance of impropriety and call into  
28 question whether a plan adopter had MNPI [material non-public

1 information] at the time of plan adoption." In response, defendant  
2 PEIZER insisted that the plan not have a cooling-off period and  
3 instead that he be allowed to start selling his shares as soon as  
4 possible.

5 e. To obtain approval of the 10b5-1 plan, defendant  
6 PEIZER falsely certified to Ontrak's CFO that "this proposed dealing  
7 was not a result of access to, or receipt of Material Nonpublic  
8 Information as described in the Company's Insider Trading Policy"  
9 when, as defendant PEIZER then knew, he possessed material nonpublic  
10 information, to wit, Ontrak's endangered relationship with Cigna and  
11 the serious risk that Cigna would terminate its contract with Ontrak.

12 f. On or about May 10, 2021, eight days before Cigna  
13 informed Ontrak of its intent to terminate the contract by the end of  
14 the year, defendant PEIZER entered into a Rule 10b5-1 plan (the "May  
15 Trading Plan") through Broker B. The May Trading Plan was in the  
16 name of Acuitas Group Holdings, an investment company wholly owned by  
17 defendant PEIZER and used by defendant PEIZER to hold his ownership  
18 interests in numerous companies, including his Ontrak shares. As  
19 part of the May Trading Plan, defendant PEIZER falsely certified to  
20 Broker B that he was not in possession of material nonpublic  
21 information when, as defendant PEIZER then knew, he did possess  
22 material nonpublic information regarding the serious risk that Cigna  
23 would terminate its contract with Ontrak. Despite the cautionary  
24 advice by Broker B to implement a cooling-off period between the  
25 establishment of the May Trading Plan and the sale of defendant  
26 PEIZER's Ontrak shares, defendant PEIZER directed Broker B to begin  
27 selling his Ontrak shares the next day.

1                   g. The May Trading Plan was attached as an exhibit to an  
2 amended Schedule 13D filed with the SEC by Acuitas Group Holdings and  
3 signed by defendant PEIZER on or about May 11, 2021.

4                   h. Pursuant to the May Trading Plan, defendant PEIZER  
5 exercised approximately 686,000 Ontrak stock warrants on a cashless  
6 basis, resulting in his acquisition of approximately 585,000 shares.  
7 Thereafter, defendant PEIZER began selling these shares on or about  
8 May 11, 2021.

9                   i. On or about May 18, 2021, Cigna notified Ontrak of its  
10 intent to terminate its contract with Ontrak by the end of the year.  
11 That same day, Ontrak's CEO notified defendant PEIZER of this  
12 information. This information was not publicly disclosed.

13                   j. Defendant PEIZER continued to sell his Ontrak shares  
14 pursuant to the May Trading Plan until on or about July 20, 2021. In  
15 total, the sales from on or about May 11, 2021, to on or about July  
16 20, 2021, resulted in approximately \$18,906,000 in proceeds.

17                   Defendant PEIZER Entered into a Second Rule 10b5-1 Plan in  
18                   August 2021 and Sold Additional Securities Based on Inside  
19                   Information About Ontrak's Impending Loss of Cigna as a Customer

20                   k. Between in or around May 2021, and in and around  
21 August 2021, defendant PEIZER continued to receive information that  
22 Cigna was ending its relationship with Ontrak, which was nonpublic  
23 information that a reasonable investor would find to be material.

24                   l. For example, on or about July 15, 2021, an Ontrak  
25 consultant sent a text message to defendant PEIZER that Cigna was  
26 "really throttling members being sent to us. It's a trickle at this  
27 point." As another example, on or about August 13, 2021, defendant  
28 PEIZER called Ontrak's Senior Vice President and General Manager of

1 Customer Strategy and Solutions, who was leading the contract  
2 renegotiations with Cigna, to find out about the likelihood of Ontrak  
3 retaining Cigna as a customer. On that call, the employee informed  
4 defendant PEIZER that he believed Cigna was likely to formally  
5 terminate its relationship with Ontrak.

6 m. That same day, on or about August 13, 2021,  
7 approximately one hour after his call with the Ontrak employee  
8 informing defendant PEIZER that the employee believed Cigna was  
9 likely to end its relationship with Ontrak, defendant PEIZER entered  
10 into a second Rule 10b5-1 plan (the "August Trading Plan") to further  
11 sell his Ontrak shares.

12 n. Prior to implementing the August Trading Plan,  
13 defendant PEIZER falsely certified to Ontrak's CFO, pursuant to  
14 Ontrak's Insider Trading Policy, that "this proposed dealing was not  
15 a result of access to, or receipt of Material Nonpublic Information  
16 as described in the Company's Insider Trading Policy" when, as  
17 defendant PEIZER then knew, he possessed material nonpublic  
18 information including, among other things:

19 i. Cigna's prior notification to Ontrak on May 18,  
20 2021, of its intention to terminate its contract with Ontrak by the  
21 end of the year;

22 ii. Cigna's continued reduction in the number of  
23 members sent to Ontrak;

24 iii. Cigna's disinterest in renegotiating the terms of  
25 any contract with Ontrak;

26 iv. That certain Ontrak executives, including its  
27 lead negotiator with Cigna, held the view that Cigna would formally  
28 terminate its contract with Ontrak; and

v. That a meeting was scheduled with Cigna personnel for August 18, 2021 concerning Ontrak's attempts at salvaging the relationship.

o. On or about August 13, 2021, defendant PEIZER, through Acuitas Group Holdings, entered into the August Trading Plan through Broker B. As he had done in connection with the May Trading Plan, defendant PEIZER again falsely certified to Broker B that he was not in possession of material nonpublic information when, as defendant PEIZER then knew, he did possess material nonpublic information including the facts listed in the preceding subparagraph. Like the May Trading Plan, the August Trading Plan did not implement a cooling-off period. Defendant PEIZER began selling Ontrak shares the next trading day after the plan was implemented and increased the daily number of shares sold pursuant to his plan to 15,000 per day from 11,000 shares per day under the May Trading Plan.

p. The August Trading Plan was attached as an exhibit to an amended Schedule 13D filed with the SEC by Acuitas Group Holdings and signed by defendant PEIZER on or about August 16, 2021.

q. Prior to Ontrak's public announcement that Cigna had terminated its contract with Ontrak, defendant PEIZER sold approximately 45,000 Ontrak shares over the course of three trading days, from on or about August 16 to on or about August 18, 2021, resulting in approximately \$900,000 in proceeds.

r. On or about August 18, 2021, during the scheduled call that defendant PEIZER was aware of at the time he entered in the August Trading Plan, Cigna formally notified Ontrak that it would terminate its contract with Ontrak. On or about August 19, 2021, Ontrak filed a Form 8-K with the SEC disclosing for the first time

1 the termination of its relationship with Cigna. Following the  
2 announcement, Ontrak's stock price fell approximately 44%.

3 Defendant PEIZER Avoided Approximately \$12.5 Million in Losses  
4 through Insider Trading

5 12. Based on the May Trading Plan that defendant PEIZER adopted  
6 while he possessed material nonpublic information, defendant PEIZER's  
7 stock sales on the basis of material nonpublic information, and the  
8 decrease in the price of Ontrak shares following the public  
9 disclosure of this information, defendant PEIZER avoided  
10 approximately \$12,069,000 in losses from the exercise of his Ontrak  
11 warrants and sale of the resulting Ontrak shares pursuant to the May  
12 Trading Plan.

13 13. Based on the August Trading Plan that defendant PEIZER  
14 adopted while he possessed material nonpublic information, defendant  
15 PEIZER's stock sales on the basis of material nonpublic information,  
16 and the decrease in the price of Ontrak shares following the public  
17 disclosure of this information, defendant PEIZER avoided  
18 approximately \$463,000 in losses from the exercise of his Ontrak  
19 warrants and sale of the resulting Ontrak shares pursuant to the  
20 August Trading Plan.

21 D. EXECUTIONS OF THE INSIDER TRADING SCHEME

22 14. From on or about at least May 4, 2021, through at least on  
23 or about August 19, 2021, defendant PEIZER, in the Central District  
24 of California, and elsewhere, for the purpose of executing the  
25 aforesaid scheme and artifice to defraud, made, and caused to be  
26 made, false and misleading representations to Ontrak's shareholders  
27 and the investing public about defendant PEIZER's possession of  
28 material nonpublic information about Ontrak's relationship with its

1 largest customer, Cigna, through the execution of -- and filing of,  
2 with the SEC, as attachments to Schedules 13D -- the May Trading Plan  
3 and the August Trading Plan.

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## COUNTS TWO AND THREE

[15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2(b)]

3       15. The Grand Jury re-alleges paragraphs 1 through 9 and 11  
4 through 13 of this Indictment here.

16. On or about the dates set forth below, in Los Angeles  
County, within the Central District of California, and elsewhere,  
defendant PEIZER, directly and indirectly, by the use of the means  
and instrumentalities of interstate commerce and of the facilities of  
national securities exchanges, in connection with the sale of Ontrak  
securities, employed a device, scheme, and artifice to defraud  
members of the investing public and engaged in acts, practices, and a  
course of business that operated and would operate as a fraud and  
deceit upon a person, in that defendant PEIZER executed and willfully  
caused to be executed the securities transactions listed below on the  
basis of material nonpublic information that he used in breach of a  
duty of trust and confidence that he owed directly and indirectly to  
the issuer of those securities, to the shareholders of the issuer,  
and to other persons and entities that were the source of the  
material nonpublic information:

COUNT	DATE	SECURITIES TRANSACTION
TWO	05/11/2021	Sale of 11,000 Ontrak shares at an average price of approximately \$30.52 per share pursuant to the May Trading Plan for a total price of approximately \$336,190.80.
THREE	08/16/2021	Sale of 15,000 Ontrak shares at an average price of approximately \$23.36 per share pursuant to the August Trading Plan for a total price of approximately \$348,144.00.

1 FORFEITURE ALLEGATION

2 [18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)]

3 17. Pursuant to Rule 32.2 of the Federal Rules of Criminal  
4 Procedure, notice is hereby given that the United States of America  
5 will seek forfeiture as part of any sentence, pursuant to Title 18,  
6 United States Code, Section 981(a)(1)(C), and Title 28, United States  
7 Code, Section 2461(c), in the event of the defendant TERREN SCOTT  
8 PEIZER's conviction of the offenses set forth in any of Counts One  
9 through Three of this Indictment.

10 18. Defendant PEIZER, if so convicted, shall forfeit to the  
11 United States of America the following:

12 (a) All right, title, and interest in any and all  
13 property, real or personal, constituting, or derived from, any  
14 proceeds traceable to the offenses; and

15 (b) To the extent such property is not available for  
16 forfeiture, a sum of money equal to the total value of the property  
17 described in subparagraph (a).

18 19. Pursuant to Title 21, United States Code, Section 853(p),  
19 as incorporated by Title 28, United States Code, Section 2461(c),  
20 defendant PEIZER, if so convicted, shall forfeit substitute property,  
21 up to the value of the property described in the preceding paragraph  
22 if, as the result of any act or omission of defendant PEIZER, the  
23 property described in the preceding paragraph or any portion thereof  
24 (a) cannot be located upon the exercise of due diligence; (b) has  
25 been transferred to, sold to, or deposited with a third party;  
26 (c) has been placed beyond the jurisdiction of the court; (d) has  
27 //

1 been substantially diminished in value; or (e) has been commingled  
2 with other property that cannot be divided without difficulty.

3  
4 A TRUE BILL  
5  
6

7 /s/  
8 Foreperson

9  
10 E. MARTIN ESTRADA  
United States Attorney



*Scott M. Garringer  
Deputy Chief, Criminal Division For:*

11 MACK E. JENKINS  
12 Assistant United States  
13 Attorney  
Chief, Criminal Division

14 RANEE A. KATZENSTEIN  
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Chief, Major Frauds Section

17 SCOTT PAETTY  
18 Assistant United States  
19 Attorney  
Deputy Chief, Major Frauds  
Section

20 ALI MOGHADDAS  
21 Assistant United States  
22 Attorney  
23 Major Frauds Section

24 GLENN S. LEON  
25 Chief, Fraud Section  
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28 MATTHEW REILLY  
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